

**BEFORE THE DEPARTMENT OF PERSONNEL ADMINISTRATION
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by

Case No: 97-2130 et al.

**STATE CONTROLLER'S OFFICE
AUDITOR SUPERVISORS ¹**

From Demotion in Lieu of Layoff To The
Class of Staff Management Auditor
(Specialist) with the Office of the State of
Controller

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as
the Department's Decision in the above matter.

Please note the following withdrawal of appellants are: [REDACTED], [REDACTED] and
[REDACTED] which did not appear at the hearing. Appellant [REDACTED] filed a written
withdrawal of his appeal before the hearing commenced.

IT IS SO ORDERED:

March 30, 1998.



K. WILLIAM CURTIS
Chief Counsel
Department of Personnel Administration

¹ A complete listing of the names, classifications, and case numbers of the individual appellants
is contained in Appendix A.

BEFORE THE DEPARTMENT OF PERSONNEL ADMINISTRATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals by

STATE CONTROLLER'S OFFICE
AUDITOR SUPERVISORS¹

Case Nos. 97-2130 et seq.

From demotion in lieu of layoff to
the class of Staff Management
Auditor (Specialist) with the
Office of the State Controller

PROPOSED DECISION

This matter came on regularly for hearing before Philip E. Callis, Administrative Law Judge, State Personnel Board, on June 25 and 26, 1997, July 22 and 23, 1997, and August 15, 1997, at Sacramento, California. Final closing briefs were received on September 25, 1997.

Appellants, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], were represented by Robert L. Stallings, Senior Labor Relations Representative, Association of California State Supervisors. The remaining appellants represented themselves.

Respondent was represented by Geoffrey F. Margolis, Staff Counsel, Office of the State Controller.

¹ A complete listing of the names, classifications, and case numbers of the individual appellants is contained in Appendix A. A separate decision has been issued in the [REDACTED] appeal (case no. 97-2152) because it involves different issues.

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Evidence having been received and duly considered, the Administrative Law Judge makes the following findings of fact and Proposed Decision:

JURISDICTION AND BACKGROUND

I

The above demotions in lieu of layoff effective May 1, 1997, and appellants' appeals therefrom comply with the procedural requirements of Government Code section 19997 et seq.

II

Appellants were employed as auditor supervisors in the Audits Division of the State Controller's Office.

III

In February 1995, the State Controller's Office (SCO) contracted with the KPMG Peat Marwick accounting firm to conduct a performance audit of the office. The audit found that the office was run in an inefficient manner and suggested a number of changes. These included consolidation of several divisions and elimination of redundant layers of management and supervision. As a result of the audit, appellants' positions as first line supervisors in the Audits Division were eliminated, and appellants were required to demote in lieu of layoff. Under the then existing classification plan, appellants could have been demoted to the associate auditor level, which would have resulted in a ten-percent pay cut. Instead, the State Controller's Office sought and obtained approval of a new "specialist" class, which

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resulted in only five-percent pay cut. In addition, appellants' supervisory benefits were maintained at their current levels ("red-circled"). Appellants filed these appeals with the Department of Personnel Administration challenging their demotions in lieu of layoff to these "specialist" positions.

REALLOCATION/RECLASSIFICATION DECISION

IV

Appellants initially challenge the decision to reallocate/reclassify their positions from the supervisory to the specialist level. This challenge is rejected. The KPMG audit conclusively demonstrated that the State Controller's Office, and the Audits Division in particular, had too many supervisors. Under such circumstances, the elimination of one layer of supervision in the Audits Division was entirely appropriate. There was no showing that the 8:1 staff/supervisor ratio used as a point of comparison in the KPMG audit was unreasonable or improper. Moreover, the five-percent salary differential between the supervisory and specialist levels was consistent with other such classifications in the Controller's Office. Finally, there was no evidence that

the State Controller's Office provided false information or misled either the Department of Personnel Administration or the State Personnel Board concerning the purpose and effect of the proposed reallocation/reclassification.

Appellants' contention that the reallocation/reclassification decision was not justified since they continued

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to perform "supervisory" functions after the reorganization is also rejected. The only supervisory duties appellants have performed since the reorganization have been the review and direction of the technical work of other auditors. Appellants themselves concede that they no longer exercise any authority over personnel policies and practices. Control over work processes, as opposed to personnel policies and practices, may appropriately be assigned to nonsupervisory personnel (see State of California (1980) PERB Dec. No. 110c-S, 5 PERC ¶ 12014).

The State Personnel Board is responsible for creating and adjusting classes of positions in the state civil service (Gov. Code § 18800). The Department of Personnel Administration is responsible for allocating every position in the state civil service to the appropriate classification (Gov. Code § 19818.6) and for setting the appropriate salary for each classification (Gov. Code § 19826). Upon reallocation of a position, changes in the status of the incumbent may be accomplished by transfer, demotion, or promotion (Gov. Code § 18804). Reasonable opportunity to appeal shall be provided to every employee affected by the reallocation of his or her position (Gov. Code § 19818.20). There was no showing that these procedures were not followed or that the Board or the Department erred in reallocating/reclassifying appellants' positions to the specialist level.

POLITICAL MOTIVATION

V

Appellants contend that the reallocation/reclassification decision was made for "political" reasons. Their principal evidence for this argument is a single sentence in a three-page memorandum from State Controller Kathleen Connell to the Department of Personnel Administration in which she mentions her "campaign for office." The paragraph in which the sentence appears reads as follows:

It is an indisputable fact that the Division of Audits had too many supervisors. When I assumed office in 1995, the division's ratio of employees to supervisors was 3.8 to one. The ratio is even more alarming as it includes many staff in production oriented activities which can be supervised with a very broad span of control. In private industry, an organization with this high supervisory ratio would not be competitive. In the government setting, it is a waste of taxpayers' money and I cannot allow it to continue. My campaign for office focused on the need to establish fiscal accountability by increasing the efficiency and effectiveness of government programs and operations. (Emphasis added.)

It is undoubtedly true that a layoff for partisan, political reasons is prohibited (Allen v. McKinley (1941) 18 Cal.2d 697).

However, a layoff for reasons of efficiency or economy is entirely permissible (Peradotto v. State Personnel Board (1972) 25 Cal.App.3d 30). A full reading of the Controller's memorandum demonstrates that the layoff was effected for purposes of governmental efficiency and not for any prohibited "political" reason.

LAYOFF PROCEDURES

VI

Appellants make a number of procedural claims. None has merit.

A. The delay in placing appellants on the reemployment list was due to appellants' own delay in returning their options forms to the Personnel Office. In any event, appellants failed to establish any prejudice to the one-month delay in placing them on the list.

B. The Notices of Layoff gave a sufficiently specific reason for the layoffs ("pursuant to the restructuring plan"). (See Peradotto v. State Personnel Board (1972) 25 Cal.App.3d 30, 33).

C. The failure of the Controller to deliver the Notice of Personnel Action (NOPA) forms until after the 30-day "correction period" was immaterial. The time for filing an appeal from layoff commences from service of the Notice of Layoff and not from service of the NOPA (Gov. Code § 19997.14). NOPA forms are internal personnel documents which had no effect upon appellants' appeals from layoff. Their late delivery did not prejudice appellants in any way.

D. There was no showing that the Controller's office failed to provide sufficient opportunity for appellants to find other positions in other SCO divisions or other state agencies. Appellants were given a full opportunity to participate in the

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State Restrictions of Appointments (SROA) process. They were also placed on the appropriate reemployment lists for their classifications once the layoff occurred. Appellants have cited no authority which would require the Controller's office to impose a freeze on all appointments and promotions in the office, or require appellants to be given preferential treatment over all other candidates for such positions, beyond that required by the SROA and reemployment list processes.

E. The Personnel Officer's provision of incorrect information about the appeals period was cured by his immediate correction of the error and DPA's agreement to extend the appeals period for an additional 30 days.

BAD FAITH

VII

Appellants rely on the same contentions to argue that the State Controller's Office acted in bad faith in reallocating/reclassifying their positions to the specialist level. Bad faith in the employment context means that the employer "may not take any action with the intention that the procedural or substantive

entitlements of its . . . employees be illegitimately thwarted."

(Kuhn v. Department of General Services (1994) 22 Cal.App.4th 1627, 1638.) Appellants have been unable to show that any of their substantive or procedural rights were violated. Bad faith was not established.

INDIVIDUAL CLAIMS

VIII

A. [REDACTED]. Appellant [REDACTED] was assigned to an administrative position in the Audits Division which involved few or no auditing duties. [REDACTED] contended that he should have been provided an additional demotional path to the class of Staff Services Manager (Specialist) which more accurately reflected his actual job duties. This contention is rejected. Government Code section 19997.8 provides in relevant part:

In lieu of being laid off an employee may elect demotion to (a) any class with substantially the same or lower maximum salary in which he or she had served under permanent or probationary status, or (b) a class in the same line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department.

Under this provision, the class of Staff Services Manager was not included in [REDACTED] demotional pattern because (1) [REDACTED] never served in the classification (as set forth in subd. (a)); and (2) the class as a whole was not in the "same line of work" as the audit supervisor classifications (as set forth in subd. (b)). The fact that [REDACTED] may have performed duties appropriate to the Staff Services Manager classification is irrelevant. [REDACTED] was required to show either that he had been formally appointed to the class, or that the class as a whole was in the same line of work, before it could be included in his demotional pattern.

B. [REDACTED]. Appellant [REDACTED] argues that his situation is different from that of all the other auditor

supervisors because he was previously moved into a nonsupervisory position with the promise that he could remain classified at his supervisory level until he transferred or retired. This argument is rejected. The method by which appellant [REDACTED] was placed into his position is irrelevant. Once it was decided to layoff employees in his classification, the layoffs had to proceed in inverse order of seniority as required by statute (Gov. Code § 19997.3). Appellant has cited no authority which would permit the Controller to carve out a special exception for appellant even if it wanted to do so. Moreover, even if appellant could otherwise establish the elements of estoppel, this would lead to an unjust result by permitting appellant [REDACTED] to remain in his position while other more senior employees were demoted. Estoppel need not be applied if it would result in an injustice or would nullify a strong rule of policy adopted for the benefit of the public (Lentz v. McMahon (1989) 49 Cal.3d 393, 399).²

WITHDRAWAL OF APPEALS

VIII

Appellants [REDACTED], [REDACTED], and [REDACTED] did not appear at the hearing and were not otherwise represented. Since they bore the burden of proof to establish grounds for their appeals, their appeals will be deemed withdrawn (cf. Gov.

² Because of this conclusion, it is unnecessary to resolve respondent's claim that appellant [REDACTED] appeal is untimely.

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Code § 19579). In addition, appellant [REDACTED] filed a written withdrawal of his appeal before the hearing commenced.

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT, THE ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Government Code section 19997.14(a) provides in relevant part:

"An employee may appeal to the [D]epartment [of Personnel Administration] within 30 days after receiving notice of layoff on the ground that the required procedure has not been complied with or that the layoff has not been made in good faith or was otherwise improper."

In Peradotto v. State Personnel Board (1972) 25 Cal.App.3d 30, the court described the appropriate scope of review by quoting Placer County Employees Assn. v. Board of Supervisors (1965) 233 Cal.App.2d 555, 559:

"The courts have adopted the criterion of good faith to weigh the legality of actions abolishing civil service positions. The action will be upheld if taken in good faith, but invalidated if it is a subterfuge for the piecemeal dissolution of the civil service system or a sham method of ousting an unwanted employee. Reorganization of governmental offices promulgated in good faith and for reasons of efficiency or economy does not 'nullify the basic principle' of civil service even though it results in abolition of one or several civil service positions.'" (Citations omitted.)

In the instant case, appellants were demoted in lieu of layoff because of a reorganization of the State Controller's Office Audits Division. Appellants failed to establish that the

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required procedure was not complied with, that the layoff was not made in good faith, or that it was otherwise improper. Their appeals must be denied.

* * * * *

WHEREFORE IT IS DETERMINED that:

1. The appeals of [REDACTED], [REDACTED], [REDACTED], and [REDACTED] are withdrawn; and

2. The remaining appeals of the SCO auditor supervisors from demotion in lieu of layoff effective May 1, 1997, are denied.

* * * * *

I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter and I recommend its adoption by the Department of Personnel Administration as its decision in the case.

DATED: January 23, 1998



Philip E. Callis
Administrative Law Judge
State Personnel Board

APPENDIX A

97-2130	[REDACTED]	Staff Management Auditor
97-2602	[REDACTED]	Supervising Governmental Auditor I
97-2132	[REDACTED]	Supervising Governmental Auditor I
97-2134	[REDACTED]	Supervising Governmental Auditor I
97-2135	[REDACTED]	Staff Management Auditor
97-2137	[REDACTED]	Staff Management Auditor
97-2138	[REDACTED]	Staff Management Auditor
97-2139	[REDACTED]	Staff Management Auditor
97-2140	[REDACTED]	Supervising Governmental Auditor I
97-2141	[REDACTED]	Supervising Governmental Auditor I
97-2142	[REDACTED]	Staff Management Auditor
97-2143	[REDACTED]	Staff Management Auditor
97-2144	[REDACTED]	Supervising Governmental Auditor I
97-2145	[REDACTED]	Supervising Governmental Auditor I
97-2146	[REDACTED]	Staff Management Auditor
97-2147	[REDACTED]	Staff Management Auditor
97-2148	[REDACTED]	Supervising Governmental Auditor I
97-2149	[REDACTED]	Staff Management Auditor
97-2150	[REDACTED]	Staff Management Auditor
97-2151	[REDACTED]	Supervising Governmental Auditor I